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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROSALIE FOSS,)	Case No. '16CV1458 CAB BGS
)	
Plaintiff,)	<u>COMPLAINT</u>
)	
vs.)	
)	
NAVIENT SOLUTIONS, INC. and)	<u>DEMAND FOR JURY TRIAL</u>
DOES 1-10, inclusive.)	
)	
Defendants.)	
)	
)	

INTRODUCTION

1. ROSALIE FOSS ("Plaintiff") brings this action against NAVIENT SOLUTIONS, INC. ("Defendant"), for violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et. seq.*

JURISDICTION AND VENUE

1 2. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1331 as
2 Plaintiff's claims arise under the laws of the United States.

3 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
4 because the acts and transactions alleged in this Complaint occurred here,
5 Plaintiff resides here, and Defendant transacts business here.
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8

9 4. Venue Is Proper In the Southern District of California as Plaintiff
10 received telephone calls from Defendant while she was in San
11 Diego County;
12

13 5. Fed. R. Civ. P. 1391(c)(2) provides:
14

15 (2) an entity with the capacity to sue and be sued in its common
16 name under applicable law, whether or not incorporated, shall be
17 deemed to reside, if a defendant, in any judicial district in which
18 such defendant is subject to the court's personal jurisdiction with
19 respect to the civil action in question and, if a plaintiff, only in the
20 judicial district in which it maintains its principal place of
21 business;
22
23
24

25 6. Further, Fed. R. Civ. P. 1391(d) provides:

26 (d) Residency of Corporations in States With Multiple
27 Districts.— For purposes of venue under this chapter, in a State
28

1 which has more than one judicial district and in which a defendant
2 that is a corporation is subject to personal jurisdiction at the time
3 an action is commenced, such corporation shall be deemed to
4 reside in any district in that State within which its contacts would
5 be sufficient to subject it to personal jurisdiction if that district
6 were a separate State, and, if there is no such district, the
7 corporation shall be deemed to reside in the district within which
8 it has the most significant contacts.
9

- 10
11
12 7. Thus, pursuant to Fed. R. Civ. P. 1391(d), Defendant will be
13 deemed to reside in the Southern District of California, thus making
14 venue proper here, should Defendant have the proper and necessary
15 contact within the state and district where the action is filed.
16

17 **PARTIES**

- 18
19 8. Plaintiff is an individual residing in Bradford, Rhode Island, and
20 in this Judicial District.
21

- 22 9. Defendant is a national consumer lending association with a
23 whose principal purpose includes collection of debts and Defendant regularly
24 collects or attempts to collect the debts owed or due or asserted to be owed or
25 due. Defendant regularly uses the telephone and the mail to engage in the
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1 business of collecting debt in several states including Rhode Island and
2 California.

3 10. Defendant is engaged in the collection of debts from consumers
4 using the mail and telephone. Defendant regularly attempts to collect debts
5 alleged to be due another and Defendant is a debt collector.
6

7 11. The true names and capacities, whether individual, corporate, or
8 in any other form, of Defendants DOES 1 through 10, inclusive, and each of
9 them, are unknown to Plaintiff, who therefore sues them by such fictitious
10 names. Plaintiff will seek leave to amend this Complaint to show the true
11 names and capacities of DOES 1 through 10 should they be discovered.
12
13
14

15 **FACTUAL ALLEGATIONS**

16 12. Since approximately June 2015, and specifically within one year
17 prior to the filing of this action, Defendant contacted Plaintiff to collect an
18 alleged debt.
19

20 13. Upon information and belief, Plaintiff's alleged debt is an
21 obligation or alleged obligation of a consumer to pay money arising out of a
22 transaction in which the money, property, insurance, or services which are the
23 subject of the transaction are primarily for personal, family, or household
24 purposes, whether or not such obligation has been reduced to judgment. The
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1 debt at issue belongs not to Plaintiff, but to her son, and Plaintiff is not a co-
2 signor, co-borrower or otherwise legally obligated to repay the alleged debt.

3
4 14. At all times relevant to this action, Defendant owned, operated
5 and/or controlled telephone number (302) 261-5793. At all times relevant to
6 this action, Defendant called Plaintiff from, but not limited to, the forgoing
7 telephone number for the purpose of collecting the alleged debt.
8

9 15. Defendant placed telephone calls to Plaintiff's cellular telephone
10 in July 2015 while she was in San Diego County.
11

12 16. Within one year prior to the filing of this action, Defendant
13 constantly and continuously contacted Plaintiff at Plaintiff's cellular telephone
14 number ending in 8273.
15

16 17. Within one year prior to the filing of this action, Defendant
17 caused Plaintiff's telephone to ring or engaged Plaintiff in telephone
18 conversations repeatedly, often calling on a near-daily basis.
19

20 18. On countless occasions, including the first week of July 2015,
21 Plaintiff informed Defendant that she was not responsible for paying the
22 alleged debt and demanded that Defendant cease placing its scores of
23 automated collection calls to her cellular telephone.
24
25

26 19. Despite informing Defendant that she was not responsible for the
27 alleged debt and that Defendant was to cease placing calls to her, Defendant
28

1 has never ceased placing its calls. In fact, Defendant continues to place its
2 calls nearly one year later. In all, Defendant has placed HUNDREDS of
3 automated collection calls to Plaintiff's cellular telephone after being told to
4 cease.
5

6 20. At all times relevant to this action, while conducting business in
7 Rhode Island, Defendant has been subject to, and required to abide by, the
8 laws of the United States, which included the TCPA and its related
9 regulations that are set forth at 47 C.F.R. § 64.1200 ("TCPA Regulations"), as
10 well as the opinions, regulations and orders issued by the courts and the FCC
11 implementing, interpreting and enforcing the TCPA and the TCPA
12 regulations.
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16 21. At all times relevant to this action, Defendant owned, operated
17 and or controlled an "automatic telephone dialing system" as defined by
18 TCPA 47 U.S.C. § 227(a)(1) that originated, routed and/or terminated
19 telecommunications.
20
21

22 22. Within four years prior to the filing of this action, Defendant
23 called Plaintiff at Plaintiff's cellular telephone number HUNDREDS of times
24 using equipment which has the capacity to store or produce telephone
25 numbers to be called, using random or sequential number generator and to dial
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1 such numbers, also known as an “automatic telephone dialing system” as
2 defined by TCPA 47 U.S.C. § 227(a)(1)(A) and (B).

3 23. Defendant never received Plaintiff’s consent to call Plaintiff on
4 Plaintiff’s cellular telephone using an “automatic telephone dialing system” or
5 an “artificial or prerecorded voice” as defined in 47 U.S.C. § 227 (a)(1).
6

7 24. Even assuming arguendo that Defendant did have consent to call
8 Plaintiff on Plaintiff’s cellular telephone using an ATDS, that consent was
9 subsequently revoked by Plaintiff. On countless occasions, Plaintiff revoked
10 consent by answering Defendant’s calls, and demanding that Defendant’s
11 calls cease.
12

13 25. At no time have Plaintiff and Defendant had an “established
14 business relationship” as defined by 47 U.S.C. § 227(a)(2).
15

16 26. Defendant is not a tax exempt nonprofit organization
17

18 27. Defendant’s violation of the TCPA was willful. Defendant’s
19 violation of the TCPA was willful because Plaintiff requested that Defendant
20 cease calling Plaintiff on countless occasions.
21

22
23 **FIRST CAUSE OF ACTION**
24 **(Violations of the TCPA,U.S.C. § 227)**
25

26 28. Plaintiff incorporates by reference all of the above paragraphs of
27 this Complaint as though fully stated herein.
28

1 29. Defendant violated the TCPA. Defendant's violations include,
2 but are not limited to the following:

3 a) Within four years prior to the filing of this action, on multiple
4 occasions, Defendant violated TCPA 47 U.S.C. § 227
5 (b)(1)(A)(iii) which states in pertinent part, "It shall be
6 unlawful for any person within the United States . . . to make
7 any call (other than a call made for emergency purposes or
8 made with the prior express consent of the called party) using
9 any automatic telephone dialing system or an artificial or
10 prerecorded voice — to any telephone number assigned to a . . .
11 cellular telephone service . . . or any service for which the
12 called party is charged for the call.
13

14 b) Within four years prior to the filing of this action, on multiple
15 occasions, Defendant willfully and/or knowingly contacted
16 Plaintiff at Plaintiff's cellular telephone using an artificial
17 prerecorded voice or an automatic telephone dialing system and
18 as such, Defendant knowing and/or willfully violated the
19 TCPA.
20

21 30. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff
22 is entitled to an award of five hundred dollars (\$500.00) in statutory damages,
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1 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the
2 Court finds that Defendant knowingly and/or willfully violated the TCPA,
3 Plaintiff is entitled to an award of one thousand five hundred dollars
4 (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B)
5 and 47 U.S.C. § 227(b)(3)(C).
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7
8 31. Plaintiff is also entitled to seek injunctive relief prohibiting such
9 conduct in the future.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests that judgment be entered
13 against Defendant for the following:
14

- 15 a) An injunction prohibiting Defendant from contacting Plaintiff on
16 Plaintiff's cellular telephone using an automated dialing system pursuant to
17 47 U.S.C. § 227(b)(3)(A); and
18
19 b) As a result of Defendant's violations of 47 U.S.C. § 227(b)(1),
20 Plaintiff is entitled to and requests five hundred dollars (\$500.00) in statutory
21 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B); and
22
23 c) As a result of Defendant's willful and/or knowing violations of 47
24 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests treble damages, as
25 provided by statute, up to one thousand five hundred dollars (\$1,500.00), for each
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1 and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
2 227(b)(3)(C); and

3 d) Awarding Plaintiff any pre-judgment and post-judgment interest as
4 may be allowed under the law; and

5
6 e) For such other and further relief as the Court may deem just and
7 proper.
8

9 **DEMAND FOR JURY TRIAL**

10 Please take notice that Plaintiff demands a trial by jury in this action.
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14 RESPECTFULLY SUBMITTED,

15 Dated: June 13, 2016

16 **MARTIN & BONTRAGER, APC**

17 By: /s/ Nicholas J. Bontrager
18 Nicholas J. Bontrager
19 *Attorney for Plaintiff*
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